

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

TINA CARTER HUGHES,

Plaintiff,

v.

RESEARCH TRIANGLE INSTITUTE,

Defendant.

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1:11CV546

ORDER

BEATY, District Judge.

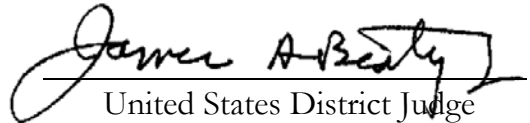
This matter is before the Court on a Recommendation of the United States Magistrate Judge recommending that Defendant Research Triangle Institute's ("Defendant") Motion to Dismiss be denied, but without prejudice to Defendant re-filing its Motion to Dismiss as to the Rule 12(b)(6) issues after Plaintiff Tina Carter Hughes ("Plaintiff") has an opportunity to amend her Complaint. The Recommendation was filed on September 24, 2012, and notice was served on the parties pursuant to 28 U.S.C. § 636(b). On October 11, 2012, both Plaintiff and Defendant filed timely Objections to the Recommendation. The Court has now reviewed de novo the Objections and the portions of the Recommendation to which objections were made, and finds that the Objections do not change the substance of the United States Magistrate Judge's ruling. The Magistrate Judge's Recommendation [Doc. #15] is therefore affirmed and adopted.

The Court notes that as part of the Recommendation, the Magistrate Judge recommends that Defendant's Motion to Dismiss should be denied to the extent it requests dismissal under Federal Rule of Civil Procedure 12(b)(5) in order to allow Plaintiff an opportunity to perfect

service of process. For the reasons set forth in the Recommendation, this Court will therefore deny Defendant's Motion to Dismiss pursuant to Rule 12(b)(5), without prejudice to Defendant re-filing its Motion to Dismiss as to the 12(b)(5) issues in the event Plaintiff fails to perfect service of process.

IT IS THEREFORE ORDERED that Defendant's Motion to Dismiss [Doc. #5] is DENIED without prejudice to Defendant re-filing its Motion to Dismiss as to the 12(b)(5) and 12(b)(6) issues after Plaintiff has amended her Complaint and had an opportunity to perfect service of process.

This, the 20th day of December, 2012.


United States District Judge